STATE OF CALIFORNIA | Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 19, 2006

To: The Commission
(Meeting of April 27, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2723 (Pavley) - Electricity: solar energy: Low-Income Housing Development Revolving Loan Program**
As Introduced February 24, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Oppose.

SUMMARY OF BILL: This bill would establish, until January 1, 2016, the Low-Income Housing Development Revolving Loan Program (Revolving Loan Program) to help finance solar energy systems in low-income housing and non-profit entities. The bill would create a new fund for this purpose and would require the moneys in the fund to be annually appropriated by the Legislature. The bill would capitalize the fund by transfers from the Commission's California Solar Initiative ("CSI"). The California Energy Commission ("CEC") would be responsible for administering the Revolving Loan Program. All repaid funds would revert to the General Fund. The bill also adopts a building efficiency requirement of 10 percent above current Title 24 standards in order for affordable units or housing projects to qualify for low-cost solar financing. The purpose of the bill is to provide low cost financing for up to 50,000 solar energy systems in low-income residential housing units located in the investor-owned utility service areas. The author's intent is to increase the installation of solar energy systems and overall building efficiency on new affordable housing units. The author believes that the developers of such housing need improved incentives and financing mechanisms to incorporate solar energy systems in the affordable housing units. The author believes that this revolving loan program would meet this need.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION: The Commission supports the goal of increasing the installation of solar energy systems on affordable housing units, and has allocated $280 million through 2016 for this purpose in D.06-01-024. The Commission stated its intent to seek public input regarding the optimal use of these funds through public workshops and other means, including low-cost financing, enhanced incentives, or a combination of these two approaches. The

Commission and the CEC already have made plans to convene a joint workshop this spring with affordable housing stakeholders to determine the best way to structure financial incentives and/or financing for this target audience.

The bill is not clear on the exact funding source for its proposal; it merely states the proposed fund will be “capitalized by transfers from the CSI.” The CSI will be funded from two sources: $2.8 billion from utility distribution rates approved by the Commission, and approximately $350 million from moneys in a Public Goods Charge (“PGC”) funding account previously appropriated to the CEC through 2011.

The Commission opposes any intent to transfer funds from the Commission’s CSI program. The collection mechanisms for these two agencies are very different. CEC program funds are collected through a dedicated rate component created under AB 1890. Commission-approved CSI funds are not appropriated by the Legislature and thus **it is doubtful whether the Legislature can transfer these funds.** The Commission annually approves a budgeted amount of incentives that the investor-owned utilities are authorized to disburse to qualified applicants. At the end of the year the investor-owned utilities request Commission authorization to recover these funds in rates.

SUMMARY OF SUGGESTED AMENDMENTS (if any): None.

DIVISION ANALYSIS (Energy Division): This bill would provide loans to entities to finance solar energy projects on low-income housing through the Revolving Loan Program Fund. This is a laudable goal. The Commission supports the goal of increasing the installation of solar energy systems on affordable housing units, and has allocated $280 million through 2016 for this purpose in D.06-01-024.

The Revolving Loan Program Fund would be capitalized by funding transfers from the Commission’s California Solar Initiative, presumably from funds already set aside by the Commission to foster solar installations on affordable housing.

Beginning in 2007, the CEC proposes to focus its solar rebate program on builders of new residential construction, funded through the emerging renewables Public Goods Charge funding created by AB 1890.

In response to the energy crisis, the Legislature adopted AB 970 (2000), which directed the Commission to develop an incentive program for super clean and renewable distributed generation (Hence, the Commission’s Self Generation Incentive Program or “SGIP”). As with the CEC's Emerging Renewables Program (ERP), the majority of SGIP rebates are paid to solar projects. However in contrast to the CEC’s rebate program, SGIP program costs are not covered by funds created in statute but are recovered by a PUC decision that directs the collection of funds through the gas and electric distribution rates of Pacific Gas and Electric, Southern California Edison, Southern California Gas Company, and San Diego Gas and Electric, proportionate to annual sales revenues. The authority to disburse these funds resides with the regulated utilities. Since 2001, the SGIP either paid or reserved rebates for a total of 200 MW, totaling $621 million. Current solar rebates are $2.50/watt.

The Commission recently reaffirmed its intent in R.06-03-004 to conduct a thorough investigation into the specific structure of affordable housing markets in order to allow significant additional affordable housing participation. The CEC and the Commission plan to schedule a joint workshop this spring to determine the best ways to structure financial incentives and/or financing for all types of new and existing affordable housing, of various sizes that are impacted differently by building codes and administrative procedures for solar incentives. This is a complex subject, and needs the benefit of workshops with appropriate expertise to resolve. These stakeholders include not only for-profit and non-profit affordable housing developers, but also the State Department of Housing & Community Development, and the Treasurer's Office's California Tax Advisory Committee, which oversees the guidelines under which affordable housing qualifies for tax-advantaged financing.

PROGRAM BACKGROUND: California currently has two legislatively-mandated distributed generation incentive programs funded through investor-owned utility rates: the CEC's ERP and the Commission's SGIP. In 2005, the agencies collaborated on a proposal to consolidate California's solar incentive programs into the California Solar Initiative by January 1, 2007. Under this agreement, the CEC will administer a program only for new residential housing, tied to its Title 24 building standards. The Commission will oversee the solar incentive program that will serve all existing housing, and all existing and new commercial buildings (including certain mixed-use commercial/residential buildings not covered by the CEC's residential building standards.)

The CEC currently administers a financing program available to local governments to help finance energy efficiency and distributed generation. That program is premised on bonds sold on the basis of long-standing, excellent credit history of local governments. It cannot be expanded in its current form for on-lending to privately-owned non-profit housing developers.

LEGISLATIVE HISTORY: The CEC's Emerging Renewable Program (ERP) was created by AB 1890, the legislation which adopted the framework for a competitive electricity industry in California, to provide incentives primarily for small solar and wind projects. AB 1890 established a separate utility rate component known as the Public Goods Charge (PGC) to fund energy efficiency and renewables development.

The PUC's Self Generation Incentive Program (SGIP) was adopted by the Commission to fulfill the requirements of AB 970 (2000), which directed the Commission to provide "differential incentives for renewable or super clean distributed generation." AB 1685 (2003) extended the SGIP through 2007. The Commission adopted an annual statewide budget of $125 million through 2007, allocated equally among Level 1 (Solar, wind, renewable fuel cells greater than 30 KW), Level 2 (Fuel cells), and Level 3 (Microturbines, gas turbines, internal combustion engines).

A similar bill to AB 2723 was carried last year by the author. That bill, AB 1383, passed the Legislature and was later vetoed by Governor Schwarzenegger as being duplicative of other efforts, such as SB 1 and the California Solar Initiative then under development by the Commission and CEC.

FISCAL IMPACT: Absorbable costs to the Commission.

STATUS: The bill is scheduled to be heard in the Assembly Utilities & Commerce Committee on April 24, 2006.

SUPPORT/OPPOSITION: None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 2723 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Pavley

FEBRUARY 24, 2006

An act to add and repeal Chapter 5.6 (commencing with Section 25460) of Division 15 of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2723, as introduced, Pavley Electricity: solar energy: Low-Income Housing Development Revolving Loan Program.

Existing law establishes various revolving loan programs to provide loans for specified purposes, including recycling market development and renewable energy resources. Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to expand and accelerate the development of alternative sources of energy, including solar energy. Existing law requires the Energy Commission, until January 1, 2006, and to the extent that funds are appropriated for that purpose in the annual Budget Act, to implement a grant program to accomplish specified goals, including making solar energy systems cost competitive with alternative forms of energy.

Under existing law, the Public Utilities Commission (PUC) adopted the California Solar Initiative that provides incentive to customer-side photovoltaics and solar thermal electric project under one megawatt and that 10% of the funds are to be used for low-income residential customers and affordable housing projects.

This bill would establish, until January 1, 2016, the Low-Income Housing Development and Nonprofit Building Revolving Loan Program (program) to help finance solar energy systems, as defined, in eligible low-income housing and nonprofit buildings located in the service areas of an electrical corporation. The bill would create the Low-Income Housing Development and Nonprofit Building Revolving Loan Program Fund (fund), and would require the moneys in the fund to be annually appropriated by the Legislature, and used for the purpose of providing loans for program purposes.

The bill would require the Energy Commission to consider and evaluate the level of funding necessary to adequately fund the program to achieve the goal of placing solar energy systems on low-income or affordable housing units, or nonprofit buildings for each fiscal year of the program. The bill would provide that 10% of the moneys from the California Solar Initiative shall be use to fund the program. The bill would provide that any moneys not used by the program during the preceding years would able available to applicant that are eligible under the California Solar Initiative.

The bill would require the Energy Commission to establish and collect a fee for each application for an allocation. The bill would require the commission to deposit the fees in the Low-Income Housing Development and Nonprofit Building Application Fee Account, which the bill would create in the fund, and would authorize the Energy Commission to expend the revenues in the account, upon appropriation by the Legislature, to process applications.

The bill would prescribe requirements for repayment of allocations made pursuant to the program and would authorize the Department of Finance to audit the expenditure of an allocation or the computation of specified payments.

The bill would require the Energy Commission, by October 31, 2008, and by October 31 annually thereafter, to submit a report to the chairs of the legislative fiscal committees on the portfolio of loans issued pursuant to the program during the previous fiscal year, including the condition of the fund, and on the anticipated demand for the load funds for the following fiscal year.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) California has a pressing need to procure a steady supply of affordable and reliable peak electricity for affordable housing units.

(b) Solar generated electricity is uniquely suited to California's needs because it produces electricity when California needs it most, during the peak demand hours in summer afternoons when the sun is brightest and air-conditioners are running at capacity.

(c) Procuring solar electric generation capacity to meet peak electricity demand increases system reliability and decreases California's dependence on unstable fossil fuel supplies.

(d) Solar generated electricity diversifies California's energy portfolio. California currently relies on natural gas for the bulk of its electricity generation needs. Increasing energy demands place increasing pressure on limited natural gas supplies and threaten to raise costs.

(e) Roughly 20,000 affordable housing units will be built annually in California in the coming years, challenging energy reliability and affordability for those residents who can least afford inflated energy bills.

(f) Investing in low-income housing solar electricity generation installations today will lower the costs of solar generated electricity for all Californians in the future.

(g) Increasing California's solar electricity generation market will also bring additional manufacturing, installation, and sales jobs to the state at a higher rate than most conventional energy production sources.

(h) Establishing a Low-Income Housing Development and Nonprofit Building Revolving Loan Program would be a cost-effective investment by ratepayers in peak electricity generation capacity, because as a result of the program ratepayers will recoup the cost of their investment through lower rates by avoiding purchases of electricity at peak rates, with additional system reliability and pollution reduction benefits.

(i) A loan program would further establish, increase, and modify incentives and provide financing mechanisms for energy efficiency and photovoltaic capabilities for subsidized and affordable housing, and establish "zero energy homes" as a goal for low-income and affordable housing residents.

(j) Solar energy systems provide substantial energy reliability and pollution reduction benefits. Solar energy systems also diversify our energy supply and thereby reduce our dependence on imported fossil fuels.

SEC. 2. Chapter 5.6 (commencing with Section 25460) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 5.6. LOW-INCOME HOUSING DEVELOPMENT AND NONPROFIT BUILDING REVOLVING LOAN PROGRAM

25460. As used in this chapter, the following terms have the following meanings:

(a) "Allocation" means a loan of funds by the commission pursuant to this chapter.

(b) "Building" means any existing or planned structure for residential uses that includes a heating or cooling system, or both. Additions to an original building shall be considered part of that building rather than a separate building.

(c) "California Solar Initiative" means an initiative adopted by the Public Utilities Commission in Decision 06-01-024.

(d) "Electrical corporation" has the meaning set forth in Section 218 of the Public Utilities Code.

(e) "Fund" means the Low-Income Housing Development and Nonprofit Building Revolving Loan Program Fund created by Section 25461.

(f) "Low-income residential housing" means affordable residential housing units that are defined in Section 50052.5 or 50053 of, or are undertaken, constructed, or operated pursuant to Chapter 3.6 (commencing with Section 50199.4) of Part 1 of Division 31 of, the Health and Safety Code.

(g) "Nonprofit building" means a building owned by a nonprofit entity.

(h) "Nonprofit entity" means an entity as defined in paragraphs (2) and (3) of subdivision (c) of Section 71116.

(i) "Program" means the Low-Income Housing Development and Nonprofit Building Revolving Loan Program created by Section 25460.5.

(j) "Solar energy system" means a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity that is qualified by the commission for participation in the program.

25460.5. The Low-Income Housing Development and Nonprofit Building Revolving Loan Program is hereby established. The purposes of the program are as follows:

(a) To provide low cost financing for up to 50,000 solar energy systems, not to exceed 75 percent of the total costs of the solar energy systems, in low-income residential housing units located in the service areas of an electrical corporation contributing funds to support the program.

(b) To be a cost-effective investment by ratepayers in peak electricity generation capacity that enables ratepayers to recoup the cost of their investment through lower rates as a result of avoiding purchases of electricity at peak rates generated by traditional powerplants and peaker generation units, with additional system reliability and pollution reduction benefits.

25461. (a) The Low-Income Housing Development and Nonprofit Building Revolving Loan Program Fund is hereby created in the State Treasury and, upon annual appropriation by the Legislature, shall be used for allocation by the commission. The fund shall be capitalized by transfers from the California Solar Initiative.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before October 31, 2008, and on or before October 31 annually thereafter, the commission shall submit a report to the chairs of the legislative fiscal committees on the portfolio of loans issued pursuant to this chapter during the previous fiscal year. The report shall include, but not be limited to, all of the following:

(1) The total amount of outstanding loans.

(2) The total amount of outstanding principal and interest.

(3) The total amount of late payments and defaults.

(4) The interest rates charged on the loans.

(c) Notwithstanding Section 7550.5 of the Government Code, on or before October 31, 2008, and on or before October 31 annually thereafter, the commission shall submit a report to the chairs of the legislative fiscal committees on the condition of the revolving fund, including an estimate of anticipated demand for loan funds for the next fiscal year. The commission's report shall measure the program's effectiveness by including, but not be limited to, all of the following information:

(1) The total annual kilowatts generated by solar energy system.

(2) The annual financial savings to low-income households and nonprofit entity generated by solar energy system.

(3) An analysis of how systems funded by the program are being financed, including any other grants, loans, rebates, incentives, tax incentives, or tax subsidies being used by the developer or applicant.

(d) On or before October 31, 2008, the commission shall submit a report to the chairs of the legislative fiscal committees on how it intends to implement the sunset provision in subdivision (a) of Section 25466.5.

(e) The moneys in the fund shall consist of both of the following:

(1) Moneys from sources set forth in Section 25461.5 or 25461.7, as appropriate.

(2) Moneys authorized by or required to be deposited in the fund by the Legislature and moneys received by the commission pursuant to subdivision (e) of Section 25462.5, or Section 25463.5 or 25464.

(f) The commission shall administer the fund.

(g) The commission shall consult with the California Tax Credit Allocation Committee (TCAC), the California Housing Finance Agency, and the Department of Housing and Community Development to develop guidelines for the fund.

(h) The commission may expend the moneys in the fund to make loans to local governing bodies, private businesses, nonprofit development corporations, and nonprofit entities to provide funding for solar energy systems in low-income housing units and nonprofit buildings.

(i) The commission may make loans for innovative projects and programs. The amount expended for these loans may not exceed 5 percent of the annual appropriation from the fund.

25461.5. (a) During each fiscal year, the commission shall consider and evaluate the level of funding that is necessary to adequately fund the program to achieve the goal of placing solar energy systems on low-income or affordable housing units and nonprofit buildings for the following fiscal year.

(b) For each fiscal year, 10 percent of the moneys from the California Solar Initiative shall be used to fund the program.

(c) Moneys in the fund not used by the program during the preceding year shall be made available to other applicant eligible for funding through the California Solar Initiative.

25462. (a) To be eligible for participation in the program, a building or housing unit shall satisfy all of the following:

(1) Be low-income residential housing or a nonprofit building.

(2) Be within the service area of an electrical corporation.

(3) Be at least 10 percent more energy efficient than required by the current standards specified in the California Building Standards Code contained in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations, or have implemented measures to reduce the energy use of the building or housing unit by 10 percent, as calculated pursuant to compliance models set forth in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations.

(b) An eligible building or housing unit that exceeds energy efficiency standards required by Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations by more than 10 percent shall receive financing at a rate of 0.25 percent lower than the lowest applicable interest rate available to the commission for every 5 percent additional improvement in energy efficiency.

25462.5. (a) An applicant may submit an application to the commission for an allocation for the purpose of financing up to 75 percent of the costs incurred in implementing a solar energy system. The application shall be in the form and contain the information that the commission shall prescribe.

(b) An application may be for the purpose of financing the applicant's share of the costs for implementing a solar energy system that are to be jointly funded through a state, local, or federal-local program.

(c) An applicant shall not receive loans from the revolving fund in excess of 75 percent of the total cost of the solar energy system. The commission shall ensure that the amount of the loan from the revolving fund, when combined with all other grants, loans, rebates, tax subsidies, tax incentives or any other source of funding or incentive provided the applicant, does not exceed 75 percent of the total actual cost of the solar energy system.

(d) The commission may approve an application if the applicant has furnished information satisfactory to the commission showing both of the following:

(1) That the building or housing is eligible pursuant to Section 25462.

(2) That the costs of the solar energy system, plus interest on state funds loaned, calculated in accordance with Sections 25463 and 25463.5, will be covered by the savings in the cost of energy during the repayment period of the allocation. The savings shall be calculated in a manner prescribed by the commission.

(e) (1) The commission shall establish and collect a fee for each application for an allocation authorized by this chapter. The fee shall be set at a level that is sufficient to reimburse the commission for the cost of the entire application process.

(2) The commission shall deposit the fees received pursuant to

this subdivision in the Low-Income Housing Development and Nonprofit Building Application Fee Account, which is hereby created in the fund. The commission may expend the revenues in the Low-Income Housing Development and Nonprofit Building Application Fee Account, upon appropriation by the Legislature, to process applications pursuant to this chapter.

(f) For purposes of this section, "applicant" means a local governing body, private business, nonprofit development corporation, or nonprofit entity.

25463. Annually at the conclusion of each fiscal year, but not later than October 31, each applicant that has received an allocation pursuant to this chapter shall compute and report to the commission the cost of the energy saved as a result of implementing the solar energy system funded by the allocation. The cost shall be calculated in a manner prescribed by the commission.

25463.5. (a) An applicant receiving an allocation pursuant to this chapter shall repay the principal amount of the allocation, plus interest, in not more than 30 equal semiannual payments, as determined by the commission. The first semiannual payment shall be made on or before December 22 of the fiscal year following the year in which the solar energy system is completed. The repayment period may not exceed the life of the equipment, as determined by the commission, or the time period in which the building or housing unit where the solar energy system will be installed maintain its low-income housing status.

(b) Notwithstanding any other provision of law, the commission shall, unless it determines that the purposes of this chapter would be better served by establishing an alternative interest rate schedule, periodically set interest rates on the loans based on the lowest applicable interest rate available to the commission and at rates not less than 3 percent per annum.

(c) The applicant receiving an allocation pursuant to this chapter shall annually budget an amount at least sufficient to make the semiannual payments required in this section. The amount shall not be raised by the levy of additional taxes but shall instead be obtained by a savings in energy costs or other sources.

25465.5. The commission may expend from the fund an amount to pay for the actual administrative costs incurred by the commission pursuant to this chapter. That amount shall not exceed 5 percent of the total appropriation, to be held in reserve and used to defray costs incurred by the commission for allocations made by the commission pursuant to this chapter.

25466. The Department of Finance, at its discretion, may audit the expenditure of any allocation made pursuant to this chapter or the computation of any payment made pursuant to Section 25463.5.

25466.5. (a) Except as provided in subdivision (b), this chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2016, deletes or extends that date.

(b) All loans outstanding as of January 1, 2016, shall continue to be repaid to the commission on a semiannual basis, as specified in Section 25463.5, until paid in full. All unexpended moneys in the fund on January 1, 2016, and thereafter, except to the extent those funds are encumbered pursuant to this chapter, shall revert to the General Fund.